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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 131 of 2001
with
CRIMINAL REVISION APPLICATION No. 132 of 2001

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HABIBALII HASANALI JIVANI

Versus

STATE OF GUJARAT

Appearance:

MR RJ GOSWAMI for Petitioner No. 1
MR HL JANI APP for Respondent No. 1
MR EE SAIYED for Respondent No. 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 28/11/2001

ORAL JUDGEMENT

Heard the learned advocates.

These Revision Applications preferred under Sec. 397 read with Section 401 CrPC arise from the common judgment and order dated 16th February, 2001 passed by the learned Addl. City Sessions Judge, Ahmedabad, Court No. 19 in Criminal Revision Applications Nos. 137 of 2000 and 160 of 2000 preferred by the accused nos. 2 & 1 respectively in Criminal Case No. 1004 of 2000 filed before the learned Metropolitan Magistrate, Ahmedabad, Court no. 5.

On 14th March, 2000, the petitioner-complainant lodged a complaint in the Court of learned Metropolitan Magistrate, Ahmedabad, Court No. 5 against the accused persons contending therein that the petitioner had purchased the property in question on 16th March, 1996; the petitioner was the only and exclusive owner of the said property, however, the accused had forged some documents in their favour in respect of the said property and had thus committed offence punishable under the Indian Penal code. On 14th March, 2000, the learned Magistrate directed court inquiry to be made under Sec. 202 CrPC. The learned Magistrate recorded the statement of the complainant on 29th March, 2000 and directed process to be issued upon the accused for offences punishable under Sections 463, 467, 468 and 114 IPC. Feeling aggrieved by the process issued by the trial Court, the accused preferred above referred Criminal Revision Applications nos. 137 of 2000 and 160 of 2000 before the learned Addl. City Sessions Judge, Ahmedabad. The learned Addl. City Sessions Judge under his judgment and order dated 16th February, 2001 was pleased to allow the said revision applications, to set-aside the process issued by the trial court and dismissed the complaint lodged by the petitioner. Feeling aggrieved, the complainant has preferred the present Revision Application.

It appears that the petitioner has instituted Civil Suit No. 5261 of 1999 in the City Civil Court, Ahmedabad against the accused persons for permanent injunction in respect of the property in question. In answer to the summons issued in the said suit, the accused have produced a certified copy of an Index from the Office of the Sub-Registrar indicating that the property in question was sold to the said accused persons on 16th March, 1996. The petitioner having thus come to know about the alleged document of 16th March, 1996,

lodged complaint against the accused persons, as aforesaid. The learned Addl. City Sessions Judge was, therefore, of the opinion that the document in question was subject matter of challenge before the Civil Court and unless the civil court declares it to be a bogus/forged document, the complaint would not be maintainable. To me, it appears that the approach of the learned Addl. City Sessions Judge is not sustainable. First, the sale document in question is not the subject matter of challenge before the civil court. The only relief prayed for before the Civil Court is for permanent injunction restraining the defendants from dealing with the property in question. Second, even if the alleged sale document were the subject matter of challenge before the Civil Court, the complainant would not be precluded from lodging complaint for the offence allegedly committed by the accused persons. Neither any statutory provision nor any judicial pronouncement of law requires that such a complaint could not be maintained. In my view, therefore, the learned Addl. City Sessions Judge has erred in cancelling the complaint lodged by the petitioner herein.

Both the aforesaid Revision Applications are allowed. The impugned judgment and order dated 16th February, 2001 passed by the learned Addl. City Sessions Judge, Ahmedabad, Court No. 19 in Criminal Revision Applications Nos. 137 of 2000 and 160 of 2000 is quashed and set-aside. Both the said Revision Applications are dismissed. Rule nisi issued in each of the present Revision Applications is made absolute. The registry shall maintain copy of this order on both the matters.

[Miss R.M Doshit, J.]

Prakash*